

REDACTED- FOR PUBLIC INSPECTION

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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| In the Matter of |) | |
| |) | |
| Funai Electric Co., Ltd. |) | |
| |) | MB Docket No. _____ |
| Petition for Waiver of Section 15.117 of the |) | |
| Commission's Rules |) | |
| |) | |

PETITION FOR WAIVER

Pursuant to Section 1.3 of the Commission's Rules,¹ Funai Electric Co., Ltd. ("Funai"), through its undersigned counsel, respectfully requests a waiver of the "analog tuner requirement" in Section 15.117(b) of the Commission's Rules.² A grant of this waiver would permit Funai to manufacture, import, market, distribute, and sell its next-generation hard disk drive / digital video disk ("HDD/DVD") recorders that do not include analog tuners in the United States. As discussed in greater detail below, grant of the requested relief would allow Funai to make available to consumers lower priced, more energy efficient equipment, thereby promoting consumer choice and retail competition without material detriment to the small percentage of consumers who continue to obtain over-the-air analog TV signals. Funai respectfully requests expedited treatment of this request and a grant of the requested waiver by no later than March 9,

¹ Section 1.3 provides "[t]he provisions of this chapter may be suspended, revoked, amended, or waived for good cause shown, in whole or in part, at any time by the Commission, subject to the provisions of the Administrative Procedure Act and the provisions of this chapter. Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown." 47 C.F.R. § 1.3.

² See 47 C.F.R. § 15.117(b).

2015, if possible, to meet milestones in its product manufacturing process that would allow for distribution as soon as possible.

I. REQUEST FOR EXPEDITED TREATMENT

Funai respectfully requests expedited treatment of this request, including, as may be necessary, foreshortened public notice periods, to allow for a grant by no later than March 9, 2015, if possible. Expedited treatment is necessary in this case to allow the company enough lead time to complete its development, manufacturing, and marketing process for its next-generation HDD/DVD recorders in time for fall and winter 2015 industry marketing events featuring new electronics, preceding the 2015 winter shopping season. In light of business decisions to allocate funds, personnel, and development resources that must be made before product development, Funai may be forced to forego launching a digital-only product in 2015 altogether if it cannot secure a grant of the requested waiver within this timeframe.

II. FUNAI'S DIGITAL-ONLY CONSUMER PRODUCTS

Funai Electric Co. Ltd., headquartered in Osaka Japan, is a well-established leading manufacturer of consumer electronics that today offers a diverse portfolio of products, including LCD TVs, DVD and Blu-ray players, inkjet and laser printers for home and office use. Established in 1991, Funai Corporation, the parent company's North American sales and marketing company with offices in Rutherford, New Jersey and in Torrance, California, markets Funai products in the United States under brand names such as Funai, Philips, Sanyo, Magnavox, and Emerson. Established in 2008, P&F USA, Inc., the parent company's North American sales and marketing company with offices in Alpharetta, Georgia, markets Funai products in the United States under brand names such as Philips.

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Funai intends to manufacture an all-digital line of HDD/DVD recorders. Funai currently anticipates that these next-generation devices will be manufactured under Model Numbers MDR865H/F7, MDR867H/F7, and MDR868H/F7, or an equivalent model. Funai's HDD/DVD recorders are generally used in conjunction with a television set and can record from the television or other external video source to an internal hard drive or to DVD. The HDD/DVD recorders also include a built-in digital tuner and electronic programming guide schedule. This product would incorporate the capability to receive and record over-the-air TV signals using the Advanced Television System Committee's ("ATSC") Digital Television Standard, which replaced the analog television standard established by the National Television System Committee ("NTSC").

From a product development standpoint, a digital-only recorder has several significant advantages over equipment incorporating both analog and digital tuner equipment. The digital-only units involve significantly less design complexity thereby avoiding substantial costs associated with added development resources, additional hardware, software, and associated intellectual property licensing fees including the cost of software and licensing fees that pertain to an analog-to-digital conversion process as well as the creation of a programming guide tailored to the analog signal. Funai's digital-only units weigh approximately <<BEGIN CONFIDENTIAL>>[REDACTED]<<END CONFIDENTIAL>> less, thus lowering shipping costs, as well as providing a lower burden on the environment when considering disposal and recycling obligations. The tuner components in these devices also cost approximately <<BEGIN CONFIDENTIAL>>[REDACTED]<<END CONFIDENTIAL>> less and the devices consume approximately <<BEGIN CONFIDENTIAL>>[REDACTED]<<END CONFIDENTIAL>> less energy and therefore are more environmentally friendly and entail lower operating costs for consumers.

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Many of the advantages associated with digital-only units result in lower costs which reinforce a robust, competitive retail market and can be passed on to the consumer. The predominant market for this product includes consumers who have cable subscriptions and set-top boxes or utilize other devices, including television sets, that already contain analog tuners, thus making the analog tuner requirement in this product redundant.

III. THE COMMISSION HAS AUTHORITY TO WAIVE THE ANALOG TUNER REQUIREMENT.

This Petition seeks a waiver of Section 15.117 which currently requires that “all TV broadcast receivers shipped in interstate commerce or imported into the United States, for sale or resale to the public ... [including] TV interface devices and set-top devices that are intended to provide audio-video signals to a video monitor, that incorporate the tuner portion of a TV broadcast receiver and that are equipped with an antenna or antenna terminals that can be used for off-the-air reception of TV broadcast signals, ... shall be capable of adequately receiving all channels allocated by the Commission to the television broadcast service.”³ This requirement has been clarified to obligate manufacturers to “include both analog and digital tuners in a device that includes either.”⁴ The Commission is required under Section 1.3 of the Commission’s Rules to determine whether there is “good cause shown” to waive the rules in the specific circumstances before the Commission.⁵ The Commission has found that a waiver is appropriate

³ 47 C.F.R. §§ 15.117(a), (b). The Commission has proposed to eliminate this requirement in the *Third NPRM* on the grounds that the digital conversion is near complete and it is not necessary to require that all TV receiver equipment contain an analog TV capability. See *Amendment of Parts 73 and 74 of the Commission’s Rules to Establish Rules for Digital Low Power Television and Television Translator Stations, et al.*, MB Docket No. 03-185, GN Docket No. 12-268, ET Docket No. 14-175, Third Notice of Proposed Rulemaking, 29 FCC Rcd 12536, 12556-57, ¶ 54 (2014) (“*Third NPRM*”).

⁴ *Dell Order*, 25 FCC Rcd at 9172-73, ¶ 2 (citing OET Laboratory Division Knowledge Database (available at <https://fjallfoss.fcc.gov/oetcf/kdb/index.cfm>), Pub. No. 218634 (rel. Dec. 17, 2009)).

⁵ 47 C.F.R. § 1.3.

where “as a general rule, deemed valid because its overall objectives are in the public interest, may not be in the ‘public interest’ if extended to an applicant who proposes a new service that will not undermine the policy, served by the rule, that has been adjudged in the public interest.”⁶

The All Channel Receiver Act authorizes, but does not *require*, the Commission to impose analog tuner requirements promulgated in Section 15.117.⁷ Absent this mandate, the Commission has discretion to “waive Section 15.117’s provisions regarding signal format reception capabilities for particular devices on public interest grounds.”⁸

The Commission has already granted waivers of the analog tuner requirement to EchoStar Technologies L.L.C. (“EchoStar”) and TiVo, Inc. (“TiVo”) under similar circumstances.⁹ In the *TiVo MO&O*, the Commission concluded that a waiver was in the public interest because it would “reduce the cost and power consumption of TiVo DVRs” and “allow TiVo to offer a less expensive, digital cable-compatible DVR.”¹⁰ In the *EchoStar MO&O*, the Commission found that grant of a waiver for EchoStar’s over-the-air digital video recorder (“DVR”) would “enhance consumer choice for retail equipment, offer consumers an additional way to access video programming, and reduce the cost and power consumption of the ...

⁶ *WAIT Radio v. F.C.C.*, 418 F.2d 1153, 1157 (D.C. Cir. 1969). *See also Dell Inc. and LG Electronics USA, Inc. Request for Waiver of Section 15.117 of the Commission’s Rules*, MB Docket No. 10-111, Order, 25 FCC Rcd 9172, 9176 ¶ 7 (MB 2010) (“*Dell Order*”).

⁷ *Dell Order*, 25 FCC Rcd at 9176, ¶ 7 (citing 47 U.S.C. § 303(s) (establishing that the Commission shall “[h]ave authority to require that apparatus designed to receive television pictures broadcast simultaneously with sound be capable of adequately receiving all frequencies allocated by the Commission to television broadcasting”) (emphasis added)).

⁸ *Dell Order*, 25 FCC Rcd at 9176, ¶ 7.

⁹ *See, e.g., EchoStar Technologies L.L.C. Petition for Waiver of Section 15.117(b) of the Commission’s Rules*, MB Docket No. 13-177, Memorandum Opinion and Order, 28 FCC Rcd 14000, 14004, ¶ 7 (2013) (“*EchoStar MO&O*”); *TiVo, Inc. Petition for Waiver of Sections 15.117(b), 15.118(b), 15.123(b)(1), 15.123(c), and 15.123(d) of the Commission’s Rules*, MB Docket No. 11-105, Memorandum Opinion and Order, 28 FCC Rcd 12181, 12181, ¶ 1 (2013) (“*TiVo MO&O*”).

¹⁰ *TiVo MO&O*, 28 FCC Rcd at 12181, 12185, ¶¶ 1, 6.

devices.”¹¹ Similarly, waiver of Section 15.117’s analog tuner requirement for Funai’s equipment is appropriate and in the public interest in this case because it would reduce costs and power consumption, providing consumers with a more competitive product, enhancing competition in the market¹² and facilitating rapid deployment of innovative product with only a “*de minimis* effect on consumers.”¹³

IV. INCLUSION OF ANALOG TUNERS IN FUNAI’S HDD/DVD RECORDER IS UNNECESSARY AND BURDENSOME AND GRANT OF THE WAIVER WOULD PROVIDE SUBSTANTIAL BENEFITS TO CONSUMERS.

The analog tuner requirement is unnecessary and burdensome as applied to Funai’s next-generation HDD/DVD recorder. Inclusion of the analog tuner increases the complexity of design which could delay market entry and the resulting products consume more energy and are heavier than a digital-only product. Incorporating an analog tuner in an HDD/DVD recorder will increase product cost due to additionally required encoding hardware, MPEG-encoder intellectual property licensing, and analog Electronic Program Guide (“EPG”) licensing costs. A grant of the requested waiver would provide Funai’s customers with a more light-weight, energy-efficient product and ensure that customers would not be forced to pay for components they do not want or need. Given the state of the DTV transition,¹⁴ any minor utility that a small subset of consumers might gain from the inclusion of an analog tuner in one manufacturer’s device that would come to market in 2015 would be temporary, and more than likely, for a shorter duration than the useful product life of the recorder.

¹¹ *EchoStar MO&O*, 28 FCC Rcd at 14000, ¶ 1.

¹² *See TiVo MO&O*, 28 FCC Rcd at 12181, ¶ 1; *EchoStar MO&O*, 28 FCC Rcd at 14000, ¶ 1.

¹³ *EchoStar MO&O*, 28 FCC Rcd at 14004, ¶ 7.

¹⁴ *See Third NPRM*, 29 FCC Rcd at 12557, ¶ 54 (noting that “all full power stations ceased analog broadcasts in 2009 and approximately 56% of LPTV, 80% of TV translator stations and 58% of Class A television stations have completed their conversion to digital.”).

V. GRANT OF THE WAIVER WOULD NOT UNDERMINE THE POLICY OF THE RULE AND, AT MOST, WOULD HAVE ONLY A *DE MINIMIS* EFFECT ON CONSUMERS.

Grant of the requested waiver would have a *de minimis* impact on consumers. In fact, the vast majority of Funai's target market would be wholly unaffected by the exclusion of an analog tuner from its next-generation HDD/DVD recorder. Moreover, for most affected consumers, the inclusion of an analog tuner in Funai's HDD/DVD recorder would likely be redundant, given that television sets are required to carry analog tuners and this product is generally used in conjunction with a television set. As the Commission aptly recognized in the *TiVo MO&O*, while subject to the analog tuner rule, these products are unusual because consumers must generally still connect to a television set to view programming that the device receives and therefore viewers "may still rely on the analog tuning functionality required to be included in the television sets they already own to view analog low-power broadcast stations and analog cable channels."¹⁵ A consumer would merely need to select a different input in his or her television set to access analog (or digital) broadcasts with minimal inconvenience.¹⁶ Furthermore, potentially affected consumers will still have an array of alternatives available to acquire equipment incorporating analog tuners, including other manufacturers' equipment, the marketplace for previously-owned or refurbished devices, and existing inventory of Funai products containing analog tuners, to access analog broadcasts during the brief period of time while the few remaining stations complete the required switch to digital broadcasts.

Requiring Funai to include an analog tuner in its HDD/DVD recorder is unnecessary to fulfill Section 15.117's underlying policy of facilitating the DTV transition. As the Commission

¹⁵ *TiVo MO&O*, 28 FCC Rcd at 12186, ¶ 8 (internal quotation omitted).

¹⁶ *See id.* at 12186, n. 40.

has recognized, in defining “TV broadcast receiver” to include devices “intended to provide audio-video signals to a video monitor” it was “focused on whether those devices should include *digital* broadcast receivers because of the impending DTV transition, rather than whether devices should include analog broadcast receivers.”¹⁷ Even if the inclusion of analog tuners were warranted, the need is sparse and rapidly diminishing given the few television stations that have not yet made the digital transition. As the *Third NPRM* recognizes, “all full power stations ceased analog broadcasts in 2009 and approximately 56% of LPTV, 80% of TV translator stations and 58% of Class A television stations have completed their conversion to digital.”¹⁸ Accordingly, the Commission is considering the complete elimination of the analog tuner requirement. Here, a limited waiver of Section 15.117 is warranted, permitting Funai to manufacture, import, market, distribute, and sell its next-generation digital-only HDD/DVD recorders in the United States, which would save consumers money, consume less energy and promote retail competition in the market with a negligible consumer burden.

VI. FUNAI COMMITS TO EDUCATING RETAILERS AND CONSUMERS ON ITS HDD/DVD RECORDER’S FUNCTIONALITY

In the interest of transparency and to avoid consumer confusion, if the waiver is granted, Funai commits to providing retailer and customer education materials and product guides that disclose the digital-only functionality, limits and capabilities of its next-generation HDD/DVD recorder.¹⁹ In addition to labeling on the HDD/DVD recorder boxes with a clear description of the product as digital-only, Funai proposes to (i) provide retailers with an in-store product

¹⁷ *TiVo MO&O*, 28 FCC Rcd at 12183, n. 8 (emphasis added).

¹⁸ *Third NPRM* 29 FCC Rcd at 12557, ¶ 54.

¹⁹ *TiVo* and *EchoStar* provided similar commitments. See *TiVo MO&O*, 28 FCC Rcd at 12184, ¶ 5; *EchoStar MO&O*, 28 FCC Rcd at 14005, ¶ 8.

information data sheet and consumer education materials describing the HDD/DVD recorder's functionality; (ii) clearly disclose in product guides that the device lacks the ability to receive over-the-air analog signals; and (iii) offer a program allowing free 30-day return or exchange if the customer purchased the device with the mistaken belief that it receives analog services.

VII. CONCLUSION

For the foregoing reasons, Funai respectfully requests expedited review of this Petition for Waiver and a grant of the requested waiver no later than March 9, 2015, if possible, to allow Funai to develop, manufacture and distribute its next-generation HDD/DVD recorders in the manufacturing cycle necessary for Funai to participate in the 2015 fall and winter shopping season.

Respectfully submitted,

/s/ Catherine Wang

Catherine Wang
Denise Wood
Morgan, Lewis & Bockius LLP
2020 K St., NW
Washington, DC 20006
(202) 373-6000

*Counsel to Funai Electric Co.,
Ltd.*

Aldo Cugini
AGC Systems LLC
94 E Springtown Rd
Long Valley, NJ 07853
www.agcsystems.tv
+1 908 867 8550

Consultant to Funai Electric Co., Ltd.

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